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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,088	03/18/2002	Michael G. Cousin	1202.03	6422

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SMITH & HOPEN PA
15950 BAY VISTA DRIVE
SUITE 220
CLEARWATER, FL 33760

EXAMINER

MELWANI, DINESH

ART UNIT PAPER NUMBER

3677

DATE MAILED: 11/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

Office Action Summary	Application No. 10/063,088	Applicant(s) COUSIN ET AL.	
	Examiner Dinesh N Melwani	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 4-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I in Paper No. 4 is acknowledged.
2. Claims 4-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-3 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,401,488. Although the conflicting claims are not identical, they are not patentably distinct from each other because are directed to the same claimed subject matter.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 3 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller *et al.* (U.S. Patent No. 4,044,725). Miller discloses a pop bead construction for forming an annular jewelry item, comprising: a first spherical body (13); a first truncate neck (14) formed on said first spherical body, said first truncate neck extending radially from said first spherical body; a first ball (12) formed on a distal free end of said first truncate neck; a first socket (generally 13a) formed in said first spherical body; said first socket including a first cavity and a first opening (13a) formed into said first cavity, said first opening formed on a surface of said first spherical body in a diametrically opposed relation to said first truncate neck; said first opening having an initial breadth slightly less than a breadth of said first ball; said first truncate neck having a length insufficient to enable said first ball to be inserted into said cavity; said first truncate neck having a length sufficient to receiver a plurality of strung beads thereon, see Fig. 3; a second spherical body; a second truncate neck formed on said second spherical body, said second truncate neck extending radially from said second spherical body; a second ball formed on a distal free end of said truncate neck; a second socket formed in said second spherical body including a second cavity and a second opening formed in said cavity, said second opening formed on a surface of said second spherical body in diametrically opposed relation to said second truncate neck; said second opening having an initial breadth slightly less than a breadth

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of said second ball; said second truncate neck having a length insufficient to enable said second ball to be inserted into said second cavity; said second truncate neck having a length sufficient to receive a plurality of strung beads thereon; said first spherical body being formed of a flexible and resilient material so that said first opening momentarily enlarges to admit said second ball of said second spherical body into said first cavity of said first spherical body when said second ball is pressed thereinto and said first opening returning to said initial breadth to capture said second ball in said first cavity after said second ball has passed through said first opening; said second spherical body being formed of a flexible and resilient material so that said second opening momentarily enlarges to admit a third ball of a third spherical body into said second cavity of said second spherical body when said third ball is pressed thereinto and said second opening returning to said initial breadth to capture said third ball in said second cavity after said third ball has passed through said second opening; an annular jewelry item being formed when a plurality

of said pop beads are chained together, see Figs. 1-3. In regards to claim 10, Miller discloses a pop bead construction in combination with a first (41) and second base (42) member comprising: a first truncate neck (A in Fig. 1') extending from a first side of said first base member at an upper end of said first base member; a ball (46) formed in a distal free end of said first truncate neck; a second truncate neck (B in Fig. 1') extending from a second side of said first base member (41) at an upper end of said first base member; a first spherical member formed on said second truncate neck at a distal free end thereof; a first socket formed in said first spherical member, See Fig. 7; a third truncate neck extending from a first side of said second base member at an upper end of said second base member; a ball formed in a distal free end of said third truncate neck; a fourth truncate neck extending from a second side of said second base member

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at an upper end of said second base member; a second spherical member formed on said fourth truncate neck at a distal free end thereof; a second socket formed in said second spherical member; said second socket adapted to releasably receive said ball formed in said distal free end of said first truncate neck; said first and second truncate necks and said first socket being formed in said first base member at said upper end thereof so that said first base member depends from respective innermost ends of said first and second truncate necks; said third and fourth truncate necks and said second socket being formed in said second base member near said upper end thereof so that said second base member depends from respective innermost ends of said third and fourth truncate necks; each of said first and second base members formed in the shape of a symbol; whereby a chain of symbols is formed when said ball formed in said distal free end of said first truncate neck is in engaging relation to said second socket formed in said second spherical member.

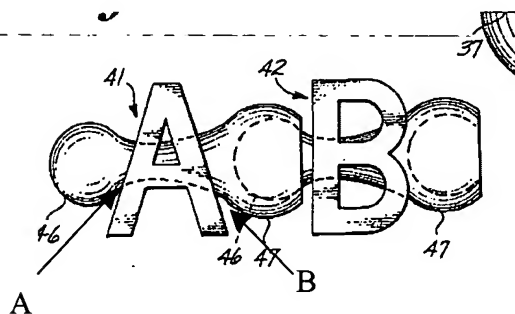


Figure 1'

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faris (U.S. Patent No. 5,138,855). Faris discloses pop bead construction substantially as claimed; wherein said pop bead construction comprises: a body (14) formed of an opaque material; an elongate, flexible neck (10) formed integrally with said body, said elongate, flexible neck extending radially from said spherical body; a ball (12) formed integrally on a distal free end of said elongate, flexible neck; a socket (16) formed in said body; said socket including a cavity and an opening into said cavity, said opening formed on a surface of said spherical body in diametrically opposed relation to said elongate flexible neck; said opening having an initial breadth slightly less than a breadth of said ball; said body being formed of a flexible and resilient material so that said opening momentarily enlarges to admit said ball into said cavity when said ball is pressed thereinto and said opening returning to said initial breadth to capture said ball in said cavity after said ball has passed through said opening; said elongate, flexible neck having a predetermined length sufficient to enable said ball formed on said distal end of said elongate, flexible neck to be inserted into said cavity formed in said body from which said elongate, flexible neck extends, see Fig. 2; said ball being enclosed within said spherical body and therefore not visible to a viewer of said pop bead construction, see Fig. 7; said pop bead forming a jewelry item of generally annular construction when said ball is disposed within said cavity, see Fig. 2; said spherical body and said elongate, flexible neck being the only visible parts of said jewelry item when said ball is fully received within said spherical body, see Fig. 7. Faris fails to disclose the shape of the body containing the socket as being spherical. However, the

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Applicant is reminded that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Faris' body with a spherical shape since changing the shape of a prior art device requires only a routine skill in the art. In regards to claim 2, Faris discloses a strung bead (i.e., the key shown in Fig. 3) disposed in engaging relation to said elongate, flexible neck; each strung bead having a diametrically-extending throughbore formed therein, each of said throughbore having a diameter greater than a diameter of said ball so that said strung bead is positionable onto said elongate, flexible neck and each of said throughbore having a diameter less than a diameter of said spherical body so that said strung bead is captured between opposite sides of said spherical body when said ball is disposed within said cavity. Faris fails to disclose a plurality of strung beads. However, the Applicant is reminded that duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Therefore, as customary, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Faris with a plurality of key (i.e., strung beads) to securely retain all keys in one location.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wexler (U.S. Patent No. 4,406,296), Veen (GB 2111 372 A), and Claude (CH 631 608 A5) substantially disclose the present invention as claimed.

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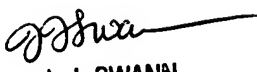
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinesh N Melwani whose telephone number is 703-305-4546.

The examiner can normally be reached on M-F, 8:30-6 except every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4115.

DNM


J. J. SWANN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600